

S.D.N.Y. – N.Y.C.  
21-cv-1355  
Rakoff, J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1<sup>st</sup> day of June, two thousand twenty-three.

Present:

Jon O. Newman,  
Eunice C. Lee,  
Sarah A. L. Merriam,  
*Circuit Judges.*

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John J. Aquino, Chapter 7 Trustee by its Assignee  
Convergent Distributors of Texas, LLC,

*Plaintiff-Counter-Defendant-  
Appellant,*

v.

23-698

Alexander Capital LP, et al.,

*Defendants-Counter-Claimants-  
Appellees,*

Joeseeph Amato,

*Defendant.*

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In re John J. Aquino,

23-718

*Petitioner.*

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In the appeal at 2d Cir. 23-698, Appellant moved for an emergency stay of the district court proceedings pending this Court's decision on Appellant's petition for a writ of mandamus in 2d Cir. 23-718. On May 12, 2023, an Applications Judge granted a temporary administrative stay pending consideration of the stay motion by a motions panel. Appellees now move to dismiss the appeal in 2d Cir. 23-698 for lack of appellate jurisdiction. Appellant moves to consolidate the proceedings in 2d Cir. 23-698 and 23-718.

It is ORDERED that the motion to consolidate is GRANTED and, accordingly, the proceedings are consolidated for the purposes of this order. Upon due consideration, it is ORDERED that the mandamus petition in 2d Cir. 23-718 is DENIED because Petitioner has not demonstrated that exceptional circumstances warrant the requested relief. *See Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004) (explaining that mandamus relief “is a drastic and extraordinary remedy reserved for really extraordinary causes” (internal quotation marks omitted)).


It is further ORDERED that Appellee's motion to dismiss the appeal in 23-698 is GRANTED and the appeal is DISMISSED. This Court has determined that it lacks jurisdiction because the district court has not issued a final order as contemplated by 28 U.S.C. § 1291. *See Petrello v. White*, 533 F.3d 110, 113 (2d Cir. 2008). It is further ORDERED that because the mandamus petition has been denied, the temporary stay is LIFTED and Appellant's stay motion is DENIED as moot.

The district court may proceed with its scheduled bench trial.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe



A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe

